

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**LC CONSULTING d/b/a  
STOP & PARK SAFE, SOHO PARKING, LLC,  
79 PARKING CORP., BOWERY PARKING LLC,  
STABLE PARKING, 24 PARKING CORP.,  
BGB PARKING, A&W PARKING CORP.,  
410 PARKING CORP., STONEHURST PARKING <sup>1</sup>**

Employer

and

**CASE NO. 2-RC-22784**

**UAW REGION 9A, INTERNATIONAL  
UNION**

Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2. Upon the entire record <sup>2</sup> in this proceeding, it is found that:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup>

2. The parties stipulated that Soho Parking, LLC, (Soho Parking) an Employer herein, with its principal place of business located at 258-262 Lafayette Street, New York, New York, is a private corporation engaged primarily in leasing and operating

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<sup>1</sup> Reflecting the name of the Employer as amended at hearing and my findings regarding single employer status.

<sup>2</sup> Briefs were filed by the Employer and Petitioner and have been duly considered.

<sup>3</sup> At the hearing, the Employer moved that the Hearing Officer verify the Petitioner's Showing of Interest. Such matters are, and have been, handled administratively. Certain other motions made at the hearing by the Employer will be discussed below.

parking lots. Annually, Soho Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$380,000 and purchases and receives goods and supplies valued in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. 79 Parking Corp., (79 Parking) an Employer herein, with its principal place of business located at 79 Crosby Street, New York, New York, is a private corporation engaged primarily in leasing and operating parking lots. Annually, 79 Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$500,000 and purchases and receives goods and supplies valued in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. Bowery Parking LLC, (Bowery Parking) an Employer herein, with its principal place of business located at 325 Bowery Street, New York, New York, is a private corporation engaged primarily in leasing and operating parking lots. Annually, Bowery Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$380,000 and purchases and receives goods and supplies valued in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. Stable Parking, an Employer herein, with its principal place of business located at 14 Kenmare Street, New York, New York, is a private corporation engaged primarily in leasing and operating parking lots. Annually, Stable Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$500,000 and purchases and receives goods and supplies valued in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. 24 Parking Corp. (24 Parking) an Employer herein, with its principal place of business located at 111-115 East 24th Street, New York, New York, is a private corporation engaged primarily in leasing and operating parking lots. Annually, 24 Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$500,000 and purchases and receives goods and supplies valued

in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. BGB Parking, an Employer herein, with its principal place of business located at 31 Monroe Street, New York, New York, is a private corporation engaged primarily in leasing and operating parking lots. Annually, BGB Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$360,000 and purchases and receives goods and supplies valued in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. A & W Parking Corp., (A&W Parking) an Employer herein, with its principal place of business located at 31 Monroe Street, New York, New York, is a private corporation engaged primarily in leasing and operating parking lots. Annually, A&W Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$500,000 and purchases and receives goods and supplies valued in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. 410 Parking Corp., (410 Parking) an Employer herein, with its principal place of business located at 410 Lafayette Street, New York, New York, is a private corporation engaged primarily in leasing and operating parking lots. Annually, 410 Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$360,000 and purchases and receives goods and supplies valued in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. Stonehurst Parking, an Employer herein, with its principal place of business located at 8-12 Stone Street, New York, New York, is a private corporation engaged primarily in leasing and operating a parking garage. Annually, Stonehurst Parking, in the course and conduct of its business operations, derives gross revenues in excess of \$500,000 and purchases and receives goods and supplies valued in excess of \$5,000 at its New York facilities directly from suppliers located outside the State of New York. All of the above entities, together with LC Consulting (LC) are hereinafter referred to as the Employer. Based upon the record

and the stipulations of the parties, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that UAW District 9A, International Union, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks an election to represent a unit comprised of all full-time and regular part-time parking attendants and cashiers employed by the Employer in the following facilities: Soho Parking, 79 Parking, Bowery Parking, Stable Parking, 24 Parking, BGB Parking, A&W Parking, 410 Parking, and Stonehurst Parking, excluding all other employees, including confidential employees, managerial employees, guards and supervisors as defined in the Act.<sup>4</sup> The Employer contends that the petitioned for unit is not appropriate inasmuch as it seeks an election in a unit of employees of nine separate employers, and that LC Consulting, named in the petition, is not the Employer of any of the petitioned-for employees. The Employer additionally contends that the cashiers sought by Petitioner are supervisors within the meaning of the Act, and alternatively, that they fail to share a community of interest with other employees in the unit. Petitioner, to the contrary, argues that LC, together with the named parking facilities, constitutes a single employer. In the alternative, Petitioner contends that LC is a joint employer with the nine parking facilities. Petitioner further argues that the cashiers do not possess any of the indicia of supervisory status as enumerated in Section 2(11) of the Act, and have a community of interest with the other employees sought by the petition.

### *Overall Structure and Operations*

LC is owned and operated by Laretta Castelli.<sup>5</sup> The record also establishes that Castelli has an ownership interest in all nine corporations. The record does not make clear, however, what the extent of her ownership is with respect to all the entities, or who else may have an interest.<sup>6</sup>

LC manages the nine parking facilities listed above. These parking facilities, consisting of eight parking lots and one parking garage, are all located in the Borough of Manhattan, within several miles of each other. According to the Employer, each of these nine parking facilities is a separate corporate entity, which maintains its own books and records as well as its own payroll. Employee paychecks are generated by a company called "Paychex," and list the name of the corporation that owns the particular facility where the employee works. In the event an employee works at more than one facility, he or she receives a separate paycheck for each facility where he or she performs services.

LC maintains an office at Stable Parking, where corporate records, licenses and insurance documents for all nine facilities, as well as all personnel records are maintained.<sup>7</sup> There is no evidence in the record of a contractual or other formalized business relationship between LC and the various corporations. Nor is there any evidence that LC has an identity separate and apart from the management services it provides for the various corporations.

The day-to-day operation of the parking facilities falls under the supervision of LC General Manager Edward Accardo, who also has an ownership interest in BGB Parking, which pays his salary. Accardo commenced his employment as a parking attendant at 410 Parking in about 1991, and was promoted to LC supervisor one year later. In about

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<sup>4</sup> Reflecting the unit description as amended at hearing.

<sup>5</sup> The record is unclear as to LC's legal status.

<sup>6</sup> According to LC General Manager Edward Accardo, Castelli owns more than 50% each of Stonehurst and BGB. No evidence was adduced on the record with respect to the other entities.

2000, he received another promotion to the position of General Manager. Accardo maintains an office at Stable Parking, but also visits the various parking facilities daily on a rotating basis. There is also a supervisor, Juan Jorge, who rotates among the parking facilities to oversee operations.

Certain of the parking facilities are open 24 hours a day, seven days per week, and others have shorter hours. Employee work shifts are largely determined by the hours the facility is open. The record reflects that between three and six employees are assigned to each location. A number of employees, including three of the four employees who testified herein, are the only employees assigned to their respective shifts. Records introduced into evidence by the Employer demonstrate that, among approximately 35 employees, there are six employees who are assigned to more than one location. In addition, employees are transferred among locations by LC for a variety of reasons such as higher customer demand,<sup>8</sup> and for coverage during employee vacations or sick leave. All employees wear shirts, supplied by LC, which bear the logo "Stop & Park."

There are separate leases for each of the parking facilities. Accardo testified that the lease for 79 Parking is expiring in January 2004, that LC has attempted to renew the lease and has, thus far, been unsuccessful. Similarly, Accardo testified that the lease for Bowery Parking is due to expire on December 31, 2004, but the landlord can, and is expected to, terminate it at an earlier date. Accardo additionally testified that LC is attempting to sell the lease to the lot where 410 Parking is located, and the lease at Stable Parking will expire. According to Accardo, the expiration or other termination of

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<sup>7</sup> Payroll records for each of the nine corporations are maintained by LC's accountant.

<sup>8</sup> One example of this adduced in the record involved Soho Parking, where only one person will ordinarily work per shift. During the Feast of San Gennaro, LC has assigned employees from other facilities to assist the employees normally assigned to that location.

the leases at any of these locations will result in a termination of operations at that location.

A roster of employees, created by Accardo from memory, and placed into evidence by the Employer, denotes two classifications of employees: parking attendant and cashier. According to the Employer, parking attendants park and retrieve cars for customers, and cashiers are responsible for collecting payments from monthly customers, issuing tickets to cars pulling in, collecting money from daily customers and filling out reports relating to the day's activities. The money collected is put into a safe, and is collected the following morning by either Accardo or Jorge, and then turned over to Phil Meli, who Accardo termed the "operator" of the management company. According to Accardo, all of the employees who are currently cashiers were hired into that position, and there is only one employee, Wilton Mendez, who works both as a parking attendant and cashier (in two different locations). Four of the nine individuals who the Employer seeks to exclude from the unit testified at the hearing.<sup>9</sup> Three of these employees, identified as cashiers by the Employer,<sup>10</sup> are the only ones present during their respective shifts, and thus issue tickets and collect money from customers as well as park cars. The fourth employee to testify, Francisco Santos, works with one other

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<sup>9</sup> The Employer argues in its brief that the testimony of these employee witnesses should be stricken, as their testimony was compelled, over their objection, by the Hearing Officer. In addition, the Employer argues that the Petitioner's failure to call as witnesses any of those employees to whom it issued subpoenas should lead to an adverse inference that if called to testify, the witnesses would testify that they had supervisory powers. During the hearing, the Employer argued that the subpoenas issued to employee witnesses by the Petitioner were defective insofar as they were not accompanied by the required witness fees. In doing so, counsel for the Employer stated:

In other words, nobody has subpoenaed these people properly, they're here under no obligation to be here and they can walk out the door if they want do so, and I think they have a right to know that. . . .

At this point in time, the Hearing Officer determined that the testimony of certain of these witnesses would be helpful in the development of the record and, pursuant the issuance of subpoenas by the Hearing Officer, four employees were appropriately called to testify.

<sup>10</sup> These are: Dario Vasquez, Jose Abreu and Eduardo Fermun.

employee during his shift. Santos testified that his primary responsibility was to issue tickets and collect money, but that he would park cars on an as-needed basis.<sup>11</sup>

### *Supervision and Terms and Conditions of Employment*

All hiring is coordinated by Accardo. Accardo testified that applicants may obtain written job applications at the various facilities, as well as the main office. All job applicants are then referred to and interviewed at LC's main office. When hired, all employees are provided with an information sheet outlining what is expected of them as well as lateness and vacation policies. These policies apply to employees at all locations. According to Accardo, employees are granted four days of sick leave per year, but the company will usually pay employees for an additional few days if they need the time. Accardo testified that if such a situation arises, he consults with Castelli for her approval. An employee who seeks sick leave will contact Accardo, or Jorge, and request time off. An attempt will be made first to arrange coverage utilizing other employees who work at that particular location, for example, by requesting that an employee come in early for a shift. In the event that cannot be done, employees will be temporarily transferred over from other facilities.

According to Accardo, cashiers receive two weeks of vacation per year. Parking attendants receive one week for the first year of their employment, and two weeks

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<sup>11</sup> Santos provided his testimony through a NLRB-provided interpreter. The Hearing Officer declined to allow the Employer to question this translator as to her qualifications. I affirm the Hearing Officer's ruling with respect to this issue. In doing so, I note that the record establishes that the translator was duly sworn and established her qualifications as a language specialist. In its brief, the Employer further contends that the translator was clearly not translating in a verbatim manner as there were brief conversations between the witness and the translator that were not duly translated. In this regard, I note that no objection was raised by Employer counsel as to these conversations during the hearing, and there is no record of them in the transcript. Further, the Employer contends that on at least one occasion Employer counsel objected to the translation because not every word had been translated. The Employer specifically contends that the translator did not translate the word "sir." This objection does not appear on the record, and the Employer has moved to amend the record to reflect its statement "Objection to the translation" at Tr. 107, In. 15. The Employer's motion to amend the record is granted. I find, however, that even if such a minor omission was made, it is not relevant to my determinations herein. As the



thereafter. There are no health or pension benefits. Employees' compensation ranges from \$7.50 to \$12.50 per hour. Initially Accardo testified that, due to their additional responsibilities, cashiers were compensated at a higher rate than parking attendants. In later testimony, however, he disputed that this was generally the case. Increases in salary may be requested by employees, or by other employees on behalf of their coworkers, or recommended by Accardo. Castelli must approve all increases to compensation. Aside from one instance, discussed below, the record contains no specific evidence with respect to this issue.

#### *Supervisory Status of Cashiers*

Accardo testified that a cashier has the authority to discharge a parking attendant, if, for example, an employee arrives for work two hours late. He could not, however, remember an instance where such a specific event occurred or where a parking attendant was discharged by a cashier for other reasons. Accardo additionally testified that cashiers may recommend that an employee be disciplined or fired. By way of example, Accardo pointed to an incident which occurred approximately two weeks prior to the hearing where cashier Dario Vasquez recommended that a coworker be fired for sitting in the back of cars and production which was not up to par. After Vasquez brought this complaint forward, Accardo, in turn, consulted with Castelli, who advised him to do what he felt was best. In light of the upcoming holidays, Accardo and Vasquez decided to give the employee a warning, which was delivered by Vasquez. Vasquez, who testified at the hearing, usually works alone at Bowery Parking, but worked at 24 Parking for a period of approximately one month in November 2003, where he was assigned with the employee in question. When asked about the situation recounted by Accardo, Vasquez stated that he initially had spoken to his coworker, and when

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Employer does not point to any specific errors in translation affecting the substance of this witness's testimony, I find no basis to reject this testimony.

circumstances did not change, spoke with Phil (Meli) and asked him to do something to rectify the situation. Vasquez stated that it was not his responsibility to hire or fire employees.

Accardo additionally testified that cashier Santos recommended that a coworker be terminated for misconduct, including sleeping in the ticket booth, in customer's cars and because of customer complaints relating to the smell of liquor in their vehicles, and that he was terminated based upon this recommendation. Accardo also testified that on a prior occasion Santos recommended that this same employee be fired, due to the theft of a customer's car. Accardo determined that the employee in question, who works a different shift from Santos, had been sleeping while on duty; however he did not go along with Santos' recommendation that the employee be fired. On cross-examination, Accardo testified that after Santos notified him of customer complaints, Accardo spoke to each of the customers in question, asking them if their car had been serviced correctly during the prior month. When the customers voice dissatisfaction with the level of service, Accardo has inquired as to the nature of the problem. Thereafter, Accardo gave the parking attendant a warning, telling him that a few customers had complained that he was sleeping in their cars or in the booth, and he had been observed drinking on the job by people in the neighborhood. Approximately 7 months later, the employee in question was found sleeping in a van, passed out. Based upon this conduct, coupled with the theft of the car from the lot, a determination was made to terminate the employee. The investigation into these circumstances involved not only Accardo, but the police and the insurance company, as well.

Santos, who also testified during the hearing, denied that he recommended that this employee be fired. He recalled that he did have a discussion with Accardo regarding the stolen car and stating during this conversation that the only way this would occur was if the employee in question had been sleeping at the time. Santos did testify that

Accardo had granted to him the power to discharge an employee, but that he has never done it. He also testified that he would consult with Eddie and Phil because they are the bosses.

Accardo testified that cashiers also may recommend employees for hire, and that he will accept that recommendation if the cashier can vouch for that individual. No specific examples of when this has occurred, however, were adduced in the record. Rodriguez testified that although he could recommend someone to the boss if he knew him to be a good worker, he has never done so. Similarly, Eduardo Fermun testified that if he knew of someone, he would tell his boss, but he has never done that. Jose Abreu testified that he has no role in the hiring, firing or discipline of employees. Accardo testified that cashiers may also recommend raises for employees, although they are usually advocating on their own behalf. Accardo testified that on one occasion Dario Rodriguez recommended that the night parking attendant receive a raise, and he did; however, Accardo could not remember the amount.

#### *Positions of the Parties*

The Employer contends that the petitioned-for unit is inappropriate insofar as the employees in question are employed only by the corporation that conducts business at the location where each of them works. In support of this argument the Employer argues that each corporation has different ownership, different employees, separate payrolls, separate licenses and separate books and records. The Employer contends that there is no evidence that LC employs any of the employees in the petitioned-for unit and that LC is nothing more than a company hired by the corporations to manage their businesses. Moreover, the Employer contends that at least some of the cashiers are supervisors and none of the cashiers have a community of interest with the parking attendants. The Petitioner, to the contrary, argues that LC, together with all named corporate entities constitutes a single employer with nine locations. In the alternative, the Petitioner

contends that LC is a joint employer with the nine parking facilities. Further, Petitioner contends that the cashiers are not supervisors within the meaning of Section 2(11) of the Act, and should be included in the unit.

### Discussion

#### *Employer Status*

Single employer status attaches in situations where apparently separate entities operated as integrated enterprise in such a way that “for all purposes, there is in fact only a single employer.” *NLRB v. Browning Ferris Industries*, 691 F. 2d 1117, 1122 (3<sup>rd</sup> Cir 1982). In determining whether employing entities constitute a single employer, the Board looks to four factors: common ownership, common management, interrelation of operations and common control of labor relations. See *Radio Union v. Broadcast Service of Mobile*, 380 U.S. 255, 256 (1965); *Alexander Bistrizky*, 323 NLRB 524 (1997); *Denart Coal Co.*, 315 NLRB 850, 851 (1994). No single factor is controlling, and not all need be present. The Board has generally held the most critical factor is centralized control over labor relations. *Mercy General Health Partners*, 331 NLRB 783 (2000). Common ownership is not, in and of itself, determinative. *Grass Valley Grocery Outlet*, 332 NLRB 1449 (2000). Rather, single employer status depends upon all the circumstances, and is characterized by the absence of an arm’s length relationship found between unintegrated companies. *Dow Chemical Co.*, 326 NLRB 288 (1998); *Mercy General Health Partners*, *supra*.

The record establishes that LC is owned in its entirety by Castelli, and that she also possesses an ownership interest in each of the nine corporations at issue herein. The record is not entirely clear, however, what the exact nature of her ownership interest is or whether she has a controlling ownership interest in more than two of the named corporate entities. There is no dispute, however, that LC manages all nine parking

facilities. Labor relations decisions for all nine parking facilities are centrally controlled by LC and implemented through Accardo, Jorge, and Meli.

Operations of the nine parking facilities are significantly interrelated. There is regular interchange among the parking attendants and cashiers at the facilities, as they “cover” for each other when employees are on vacation or ill. In addition, 6 out of 35 employees work at multiple locations. Both Accardo and Jorge direct the work of employees at all nine facilities, and visit them on a daily basis. The employees at all locations are subject to the same terms and conditions of employment and personnel policies, which are administered by LC. A single accountant handles the finances for all nine facilities. Although each corporation maintains its own books and records, these are located in a central office, as are the personnel records for all employees.

Based upon the foregoing facts, and application of the relevant factors cited above, I find that LC, and each of the nine corporations which own the parking facilities at issue herein, are a single employer. Common management exists through LC and its agents. There also is substantial interrelation of operations, including interchange of employees. Labor relations decisions, as well as terms and conditions of employment, are centrally controlled by LC. While the record is unclear as to the nature of Castellì’s ownership interest it does establish she holds an interest in every corporation, and is the sole owner of LC. Thus, it is apparent that the relationship among these entities is not one of independent companies dealing at arms length. In this regard I note that the record fails to contain any evidence of a formal business relationship between LC and any of the corporations, or that LC has an independent existence apart from its management of the parking facilities. I conclude therefore that LC, along with Stonehurst Parking, BGB Parking, Soho Parking LLC, Bowery Parking LLC, 410 Parking

Corp., 24 Parking Corp., A & W Parking Corp. (A&W) and Stable Parking, are a single employer. *Alexander Bistritzky*, supra. <sup>12</sup>

### *Supervisory Status of Cashiers*

Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them,, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

It is well established that Section 2(11) of the Act must be read in the disjunctive and that an individual therefore need only possess one of these powers for there to be a finding that such status exists. *Concourse Village, Inc.*, 278 NLRB 12, 13 (1985). However, the grant of authority must encompass the use of independent judgment on behalf of management. *Hydro Conduit Corp.* 254 NLRB 433, 441 (1981). The party seeking to exclude an individual as a supervisor bears the burden of establishing that such status, in fact, exists. *NLRB v. Kentucky River Community Care*, 523 U. S. 706 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999). Mindful that a finding of a supervisory status removes an individual from the protection of the Act, the Board avoids attaching to Section 2(11) too broad a construction. *Adco Electric, Inc.*, 307 NLRB 1113, 1120 (1992), enfd. 6 F.3d 1110 (5<sup>th</sup> Cir. 1993). The Board has noted that, in enacting Section 2(11) of the Act, Congress stressed that only persons with “genuine management prerogatives” should be considered supervisors, as opposed to “straw bosses, leadmen .... and other minor supervisory employees.” *Chicago Metallic Corp.*, 273 NLRB 1677 (1985) (citing Senate Rep. No. 105, 80<sup>th</sup> Cong., 1<sup>st</sup> Sess., 4 (1947)), aff’d in relevant part 794 F.2d 527 (9<sup>th</sup> Cir. 1986). Thus, “whenever the

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<sup>12</sup> In light of my findings regarding single employer status, I find it unnecessary to address Petitioner’s alternate argument relating to joint employer status.

evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

Based on the record evidence, I conclude that the cashiers are not supervisors as defined by Section 2(11) of the Act.

The Employer has failed to present sufficient probative evidence to establish that the cashiers as a group, or that any of them in particular, have been given the authority to hire or effectively recommend that employees be hired. The record establishes that all job applicants are referred to LC’s offices, and that the cashiers do not interview job applicants. While Accardo testified that he would hire someone based upon the recommendation of one of the cashiers, this has never occurred, and such testimony is speculative and not probative. Moreover, this sort of informal referral process hardly rises to the level of effective recommendation, especially where the evidence fails to establish that such referrals would be the only source of information on which the Employer relied when making its hiring determinations. *The Mower Lumber Company*, 276 NLRB 766 (1985); *Northwest Steel*, 200 NLRB 108 (1972). See also *World Theatre Corp.*, 316 NLRB 969 (1995) where unit employees routinely recommended hires.

The Employer also argues that the cashiers are supervisors because they can fire employees on their own authority. However, there is insufficient specific probative evidence either that this has ever occurred, or that such authority has, in fact, been conferred on employees. Although Santos testified that he had been given the “power” to discharge employees, he also stated that he would have to consult with either Accardo or Meli, as they were the bosses. Again, such speculative testimony fails to establish that Santos or any other cashier possesses any authority to discipline or effectively recommend the discipline of employees or that his duties encompass such a role. In this

regard, the Board has held that the mere issuance of a directive to alleged supervisors setting forth supervisory authority is not determinative of their supervisor status. *Connecticut Light & Power Co.*, 121 NLRB 768, 770 (1958). See also, *Bakersfield Californian*, 316 NLRB 1211 (1995). In *Security Guard Service*, 154 NLRB 8 (1965), certain “sergeants” were found not to be supervisory, notwithstanding some evidence that they had at one time been advised that they had supervisory authority, including the power to make effective recommendations. I additionally note that the other employees who testified denied that they played any role in the discipline or termination of employees.

Similarly, the record fails to establish that cashiers can effectively recommend termination of employees. The Employer relies upon evidence that Vasquez recommended termination of an employee, however the record establishes that Vasquez, at most, lodged complaints regarding his coworker’s conduct with his superiors. The assertion that Vasquez “effectively recommended” the discipline of this employee is belied by the fact that Accardo took the matter to Castelli for a determination as to what should be done. The mere fact that Vasquez may have spoken to his coworker regarding perceived deficiencies in his work performance does not establish either that he issued a “final warning,” as the Employer contends, or that he was authorized to do so. In reaching this determination, I find it relevant that Vasquez typically is the only employee on his shift. The circumstances where he allegedly made the discharge “recommendation” involved a temporary assignment, to another location, of one month’s duration.

The Employer additionally relies upon evidence that Santos issued an “effective recommendation” leading to the discharge of a coworker. However, the evidence establishes that Accardo conducted his own independent investigation of the circumstances by interviewing customers as well as employees, and that the



investigation also involved insurance agents and police. Although an individual's duties may include relaying to management complaints or reports of inefficiency against other employees, if these are investigated independently by higher management, that individual is not a supervisor within the meaning of the statutory definition. *Pepsi Cola Bottling Co.*, 154 NLRB 490, 493-494 (1965); *SDI Operating Partners*, 321 NLRB 111 (1996). The fact that Santos may have told Accardo that customers were complaining about the service they were receiving, or made a suggestion as to how the matter should be handled, falls far short of an "effective recommendation" that an employee be disciplined, or discharged. *Brown & Root, Inc.*, 314 NLRB 19 (1994).

In conclusion, I find that the evidence proffered by the Employer and otherwise adduced on the record is insufficient to establish that the cashiers have authority to exercise the use of independent judgment with respect to any of the criteria enumerated in Section 2(11) of the Act. Here, the Employer's contentions are largely conclusory assertions lacking supporting facts or discussion. Nor has the Employer provided specific evidence of any recommendation made by any cashier that was followed without independent investigation. Based upon the foregoing I find that the Employer has failed to meet its burden of proof in establishing that the cashiers as a group or individually meet any of the criteria enumerated in Section 2(11). I find, therefore, that they are not supervisors as defined by the Act.

I further find, based upon the factors of functional integration, common supervision, similarity in employee skills and functions, interchangeability and contact, and general working conditions and benefits, the cashiers share a community of interest with the parking attendants employed by the Employer and, accordingly, should be included in the unit.

Based upon the record, I find that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time parking attendants and cashiers employed by LC Consulting at the following locations: Soho Parking LLC, 79 Parking Corp., Bowery Parking LLC, Stable Parking, 24 Parking Corp., BGB Parking, A&W Parking Corp., 410 Parking Corp. Stonehurst Parking.

Excluded: All other employees and guards, professional employees and supervisors as defined in the Act.

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time<sup>13</sup> and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>14</sup> Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>15</sup> Those eligible

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<sup>13</sup> Pursuant to Section 102.21(d) of the Board's Statement of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25<sup>th</sup> and 30<sup>th</sup> day after the date of this Decision.

<sup>14</sup> Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least three full working days prior to 12:01am on the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

<sup>15</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a

shall vote on whether or not they desire to be represented for collective-bargaining purposes by UAW Region 9A, International Union.<sup>16</sup>

Dated at New York, New York  
January 2, 2004

**(s) David E. Leach**

David E. Leach, III  
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National Labor Relations Board  
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list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **January 9, 2004**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

<sup>16</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 Fourteenth St., NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by **January 16, 2004**.